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No. 934

In the Supreme Court of the United States

OCTOBER TERM, 1958

CATO BROS., INCORPORATED, WILFRED R. CATO, WILLIAM R. CATO, AND EDGAR L. STOTT, PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 694

CATO BROS., INCORPORATED, WILFRED R. CATO, WILLIAM R. CATO, AND MAGIE L. STONE, PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (Pet. App. 2–11) is reported at 175 F. Supp. 811. The opinion of the court of appeals (Pet. App. 12–20) is reported at 273 F. 2d 153.

JURISDICTION

The judgment of the court of appeals (Pet. App. 20–21) was entered on December 14, 1959. The petition for a writ of certiorari was filed on February 10, 1960. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, after a judgment has been entered in accordance with the remedial provisions of the False

Claims Act, and the judgment affirmed by the court of appeals, a district court under Rule 60(b) of the Federal Rules of Civil Procedure has the power to modify its judgment so as to impose a liability different from that prescribed by the False Claims Act.

RULE INVOLVED

Rule 60(b) of the Federal Rules of Civil Procedure provides as follows:

> MISTAKES; INADVERTENCE; EXCUSABLE NEGLECT; NEWLY DISCOVERED EVIDENCE; FRAUD, ETC.
>
> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule

does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

STATEMENT

On July 31, 1956, the district court awarded the United States $2,000 for each of thirty false claims submitted by the four petitioners to the Commodity Credit Corporation (App. 34, 35).[1] The judgment was based upon findings that petitioners had transmitted to the Commodity Credit Corporation thirty letters of transmittal each containing at least one of 288 fraudulent notes procured by petitioners in order to obtain price support loans on cotton which petitioners falsely represented was produced by the makers of the notes (App. 22, 24, 32–33). On petitioners' appeal, the court of appeals held that the False Claims Act (R. S. 3490, 5438, 31 U.S.C. 231) did not apply to a false claim against the Commodity Credit Corporation. 242 F. 2d 359. On review of this determination, this Court held that a false claim against the Commodity Credit Corporation did come within the Act, and reversed and remanded the cause to the court of

[1] "App." refers to the appendix to the government's brief in the court of appeals, filed in this Court.

appeals "for further proceedings not inconsistent with this opinion." *United States* v. *McNinch*, 356 U.S. 595, 600. On remand, the court of appeals gave further consideration to petitioners' appeal and rejected their argument that the $60,000, joint and several, judgment against them, made pursuant to the False Claims Act, was unreasonable and in violation of the Constitution. 263 F. 2d 697. The court of appeals, accordingly, set aside its prior judgment of reversal and affirmed the district court's judgment of July 31, 1956. A petition for a writ of certiorari was denied. 359 U.S. 989.

On July 31, 1959, following the receipt of the court of appeals' mandate affirming the $60,000 judgment of the district court (Pet. App. 1), the district court reduced the judgment to $20,000 (Pet. App. 11–12). The court concluded that Rule 60(b)(6) of the Federal Rules of Civil Procedure empowered the court to modify its original judgment and to apply its own measure of petitioners' liability notwithstanding the explicit terms of the False Claims Act (Pet. App. 2–11).[2]

On appeal by the United States from the order of July 31, 1959, the court of appeals reversed the order

[2] In reducing the judgment from $60,000 to $20,000, the district court stated that it "ha[d] in mind" that petitioners' fraud netted them a profit of only $8,208.39 and that the litigation stemming from the fraud had been protracted and costly (Pet. App. 9–10). The court disregarded the out-of-pocket loss to the United States of $29,930.09 caused by petitioners' fraud, since the court believed the loss could have been prevented if government employees had taken proper action (Pet. App. 4, 10), and also ignored the government's investigation and litigation expense.

of the district court and remanded with directions that the district court reinstate the judgment of July 31, 1956, "in accordance with the previous mandate of this court" (Pet. App. 20).

ARGUMENT

The False Claims Act (31 U.S.C. 231) specifically fixes the liability of anyone violating the Act at $2,000 for each false claim, plus double damages for any loss the United States may have sustained. See *United States ex rel. Marcus* v. *Hess*, 317 U.S. 537. Consistent with the Act, petitioners' liability to the United States—based on thirty separate false claims—was fixed at $60,000 in the original judgment of the district court, and this judgment was ultimately affirmed by the court of appeals (*supra*, pp. 3–4). The court of appeals was clearly correct in reversing the district court's subsequent attempt to reduce petitioners' liability to $20,000.

We start with the fundamental premise that, unless authorized by the appellate court or by some governing statute or rule, a lower court cannot deviate from an appellate mandate and cannot reopen or reconsider questions which the mandate lays to rest. *Briggs* v. *Pennsylvania, R. Co.*, 334 U.S. 304; *Sprague* v. *Ticonic Bank*, 307 U.S. 161; *In re Sanford Fork & Tool Co.*, 160 U.S. 247; *In re Washington & Georgetown R'd Co.*, 140 U.S. 91. Here, neither the earlier opinion of the court of appeals nor its mandate authorized the district court to reconsider or reexamine the *quantum* of petitioners' liability to the United States. Rather, reliance is mistakenly placed on Rule 60(b) of the

Federal Rules of Civil Procedure (*supra*, p. 2) as authority for the reopening.

The issue raised by the decision of the district court involves the substantive power of a district court, after judgment, to disregard the remedial formula prescribed by the False Claims Act, not the procedural authority of a court under Rule 60(b) to vacate a judgment for a valid reason. Cf. *Ackermann* v. *United States*, 340 U.S. 193; *Klapprott* v. *United States*, 335 U.S. 601.[3] The district court admitted that it lacked the authority to reduce petitioners' liability before final judgment (Pet. App. 8). Nevertheless, the court determined that Rule 60(b) conferred such authority after judgment. This determination was a plain misuse of the procedural authority provided in Rule 60(b), since it is impossible to find in the Rule the power or authority to ignore or depart from the clear command of the False Claims Act. And even if, contrary to the fact, Rule 60(b) had purported to allow the district court to depart from such substantive statutes as the False Claims Act, Congress has provided in 28 U.S.C. 2072—the statutory authorization for the Federal Rules of Civil Procedure—that the rules "shall not abridge, enlarge or modify any

[3] In the words of the court of appeals, the district court's decision was not dealing "with the incidental modification of substantial rights that sometimes occur in the enforcement of [a] rule of practice and procedure, but with the fundamental rights of parties which may be enforced but may not be modified by the rules of procedure" (Pet. App. 18). In contrast, cases such as *Klapprott* v. *United States*, *supra*, relied upon by petitioners, do not involve substantive rights since there the effect of Rule 60(b) was to require a new trial, not to deny or limit the substantive rights of the other party.

substantive right * * *." See *Mississippi Pub. Corp.* v. *Murphree*, 326 U.S. 438, 444–446; *Sibbach* v. *Wilson & Co.*, 312 U.S. 1, 9–10; *United States* v. *Sherwood*, 312 U.S. 584, 589–590.

Petitioners do not point to any defect in the judgment itself, or any infirmity in the trial proceedings or the proceedings on appeal, which in any way cast doubt on the validity or correctness of the original judgment against them. Instead, their motion to vacate pursuant to Rule 60(b) simply asserted that to enforce the judgment "will cause extreme hardship and injustice" (App. 43). This unsubstantiated claim is not a ground for vacating or modifying the judgment, particularly where to do so would be in derogation of statute. As stated by the court below, "It has never been held and it is not now contended that a federal judge, in a case under a federal statute which prescribes penalties for wrongful conduct, has the power, after violation of the statute has been established, to impose any penalty other than that named in the law; and it would be contrary to reason to hold that after a lawful judgment has been entered in accordance with the statute the judge is then endowed by the rule with the extraordinary power, which he did not previously possess, to disregard the will of Congress" (Pet. App. 17–18).

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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